

No. 502071-1-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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TIMBERLAND BANK, a  
Washington corporation,

Respondent,

vs.

SHAWN A. MESAROS,

Appellant.

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BRIEF OF RESPONDENT

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## **TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
I. INTRODUCTION .....	1
II. RESTATEMENT OF ISSUES .....	2
a. Whether Mesaros's appeal is moot as the LLC shares have been sold by the Grays Harbor Sheriff pursuant to RCW 6.17 <i>et seq.</i> and Mesaros has been dissociated from the LLC .....	2
b. Whether RCW 25.15.256 allows the trial court to make additional orders to give effect to the charging order as the trial court did in this case .....	2
c. Whether Mesaros should be allowed to continue to operate the LLC and access LLC funds when he does not own any interest in the LLC and the LLC is wholly-owned by others .....	2
III. RESTATEMENT OF CASE .....	2
a. LLC Charging Order .....	2
b. Contempt .....	3
c. Order Confirming Sale .....	4

IV. ARGUMENT .....	4
A. Standard of Review .....	4
B. Mootness .....	4
C. LLC Charging Order .....	6

## **TABLE OF AUTHORITIES**

### **Cases**

	<u>Page</u>
<u>Kelley v. Centennial Contractors Enterprises, Inc.</u> 147 Wash.App. 290, 294-295, 194 P.3d 292-294 (2008), <u>aff'd</u> , 169 Wash. 2d 381, 236 P.3d 197 (2010) .....	4
<u>Mead Sch. Dist. No. 354 v. Mead Ed. Ass'n (MEA)</u> , 85 Wash.2d 278, 280, 534 P.2d 561, 563 (1975) .....	5
<u>State v. Hunley</u> , 175 Wash.2d 901, 907, 287 P.3d 584 (2012) .....	4, 5

### **Statutes**

RCW 6.17 et seq. ....	2
RCW 25.15 .....	7
RCW 25.15.131(b) .....	6
RCW 25.15.251(b) .....	6
RCW 25.15.256 .....	2
RCW 25.15.256(1) .....	7

## **INTRODUCTION**

Appellant Shawn Mesaros (hereinafter “Mesaros”) appeals the trial courts orders requiring him to provide corporate documentation and restraining him from taking any corporate action on behalf of Pamria, LLC, a Washington limited liability (hereinafter “the LLC” or “Pamria”) that was the subject of an LLC charging order. Mesaros never provided corporate documentation as ordered and was found in contempt of court. Mesaros did not appeal the orders finding him in contempt. Mesaros caused a lawsuit to be filed on behalf of the LLC that was summarily dismissed, but contempt proceedings were not sought for this violation of the court’s order.

The trial court foreclosed the membership interest of the LLC and Mesaros’s interest, which constituted 100% ownership of the LLC, was sold by the Grays Harbor County Sheriff to a non-party to this case after a writ of execution was issued by the trial court.

It is unclear what Mesaros is seeking on appeal other than a collateral attack on the orders finding him in contempt. He does not dispute the charging order itself or the foreclosure, execution, and ultimate

sale of his interest in the LLC. The execution sale was confirmed by an order of the trial court, which was not appealed by Mesaros.

This Court should affirm.

### **RESTATEMENT OF ISSUES**

- a. Whether Mesaros's appeal is moot as the LLC membership interest has been sold by the Grays Harbor Sheriff pursuant to RCW 6.17 *et seq.* and Mesaros has been dissociated from the LLC.
- b. Whether RCW 25.15.256 allows the trial court to make additional orders to give effect to the charging order as the trial court did in this case.
- c. Whether Mesaros should be allowed to continue to operate the LLC and access LLC funds when he does not own any interest in the LLC and the LLC is wholly-owned by others.

### **RESTATEMENT OF CASE**

#### **a. LLC Charging Order**

After judgment, Respondent filed a Motion and Declaration for Order Charging LLC Interest of Judgment Debtor. CP 21-23. The motion sought additional relief to give effect to the charging order. This additional relief included restraining Mesaros from conducting LLC business including accessing corporate funds and the disclosure of the LLC operating agreement and all company minutes. CP 22. The company records were requested in order to evaluate whether a sale on

execution would be in the interest of Plaintiff to pursue. RP 3. The restraints regarding company funds were requested to prevent Mesaros from accessing LLC funds to the detriment of Plaintiff/Judgment Creditor, his intent to do so being clear. RP 3.

At the hearing, Mesaros demonstrated his intent to continue to operate the LLC and access corporate funds by opposing the additional relief requested by Respondent. CP 26-28, RP 4-8. Rather than debate counsel for Mesaros on the propriety of granting the additional relief prior to execution, the court foreclosed the LLC membership interest and authorized the issuance of a Writ of Execution. RP 6-7. That relief was requested, in the alternative, in Respondent's Reply to Response to Motion for Order Charging LLC Interest of Judgment Debtor. CP 30-33. It is not clear if Mesaros challenges the authority of the trial court to grant the additional relief it granted after foreclosing the LLC interest as the Brief of Appellant focuses on the trial court's authority before the interest is foreclosed. *See Generally* Brief of Appellant.

**b. Contempt**

Mesaros was held in contempt twice for failing to comply with the court's orders regarding the disclosure of corporate records. CP 44-51. Mesaros did not appeal either of the two orders finding him in contempt. Both are final orders.

**c. Order Confirming Sale**

The Grays Harbor County Sheriff sold the LLC membership interest of Mesaros, and the sale was the subject of the Order Confirming Sale. CP \_\_\_\_, a copy of which is attached hereto as Exhibit A<sup>1</sup>. This order was not appealed by Mesaros and is also a final order. The membership interest was purchased by a non-party to this case. *Id.*

**ARGUMENT**

**A. Standard of Review**

Whether Appellant's appeal should be dismissed because it is moot is an issue of law that is reviewed *de novo*. *Kelley v. Centennial Contractors Enterprises, Inc.*, 147 Wash. App. 290, 294–95, 194 P.3d 292, 294 (2008), aff'd, 169 Wash. 2d 381, 236 P.3d 197 (2010).

Respondent agrees that the standard of review of the trial court's interpretation of a statute is subject to *de novo* review. BA 4.

**B. Mootness**

Generally, an appellate court will not consider a case that is moot. *State v. Hunley*, 175 Wash.2d 901, 907, 287 P.3d 584 (2012). A case is moot if the court cannot provide effective relief to the party requesting

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<sup>1</sup> Respondent designated this order in its Designation of Clerk's Papers dated September 12, 2017.

relief. *Hunley* at 907. Here, Mesaros does not challenge the provision of the charging order that forecloses his interest in the LLC and authorized the execution sale. BA 3. Nor has Mesaros appealed the order that confirmed the sale of his entire interest in the LLC. Mesaros only seeks to avoid the contempt findings by attacking the validity of the order that he contemptuously violated. BA 8. However, Mesaros has not appealed the orders holding him in contempt.

Therefore, Mesaros's appeal is moot. A party who violates an order of a trial court that has jurisdiction may not attack an order of contempt by appealing the validity of the underlying order.

(W)here the court has jurisdiction of the parties and of the subject matter of the suit and the legal authority to make the order, a party refusing to obey it, however erroneously made, is liable for contempt.' *Dike v. Dike*, 75 Wash.2d 1, 8, 448 P.2d 490, 495 (1968), quoting *Robertson v. Commonwealth*, 181 Va. 520, 536, 25 S.E.2d 352 (1943); *Deskins v. Waldt*, 81 Wash.2d 1, 5, 499 P.2d 206 (1972).

*Mead Sch. Dist. No. 354 v. Mead Ed. Ass'n (MEA)*, 85 Wash.2d 278, 280, 534 P.2d 561, 563 (1975). Accordingly, even if Mesaros is correct that the trial court went beyond the statutory authority of RCW 25.15, he is not entitled to a vacation of the orders of contempt.

Moreover, because Mesaros did not appeal the order confirming sale of his LLC membership interest nor the portions of the charging order



foreclosing his interest, a non-party to this case now owns his interest. CP \_\_\_, Exhibit A. Thus, the appeal is moot.

### **C. LLC Charging Order**

The court was within its authority to order Mesaros to disclose LLC records prior to the execution sale and to restrain him from continuing any LLC business. Mesaros argues otherwise, citing RCW 25.15.251(b). BA 5. This statute states that a transfer of an LLC member's interest:

Does not, as against the members or the limited liability company, entitle the transferee to participate in the management of the limited liability company's activities, to require access to information concerning the limited liability company's transactions except as provided in subsection (5) of this section or in RCW 25.15.136(11), or to obtain access to information to which a member is otherwise entitled pursuant to RCW 25.15.136 or the limited liability company's other records.

RCW 25.15.251(b)(emphasis supplied). But there are no other members of the LLC as Mesaros was the 100% owner. CP \_\_\_, Exhibit A; CP 31. Obviously, the statute is intended to protect other members of the LLC against the meddling of a transferee, especially a transferee who became a member against the will of the transferor. It is not logical to interpret the statute to allow Mesaros to continue to be involved in an entity in which he has no interest. Mesaros has been dissociated from the LLC because of the transfer of all of his interest. RCW 25.15.131(b).

Moreover, RCW 25.15.256(1) specifically authorizes the trial court to make additional orders to give effect to the charging order. This is especially important, as in this case, where the court orders the sale of the LLC and an execution sale is authorized as any prospective bidder (including Respondent) would want information about the state of the LLC and its value. And the court did not go beyond this authority when it restrained Mesaros from taking any action on behalf of the corporation. Obviously, the court wanted to preserve whatever value the LLC interest had before it could be affected by Mesaros.

The argument and statutory interpretation advanced by Mesaros does not make sense in single-member LLC circumstances. Even if it did, the statutes relied upon by Mesaros are limitations that only exist before the LLC is sold to a third party. Nothing in RCW 25.15 allows Mesaros to remain involved in LLC business after the court orders foreclosure and a sale is made of 100% of the membership interest of the LLC.

There is no error.

### **CONCLUSION**

The appeal should be dismissed because the issues raised by Appellant Shawn Mesaros are moot. In the alternative, the trial court's orders should be affirmed.

Respectfully submitted this 15th day of September 2017.

PARKER, WINKELMAN & PARKER, P.S.

By 

James T. Parker, WSBA# 36599

Attorney for Respondent

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### **Certificate of Service**

I certify that on September 15, 2017, I caused a true and correct copy of the foregoing Brief of Respondent to be served on the following in the manner indicated below:

James Bulthuis  
Counsel for Appellant  
1700 Seventh Avenue, Suite 2200  
Seattle, WA 98101

By U.S. mail and by email: [jbulthuis@tousley.com](mailto:jbulthuis@tousley.com)

By 

James T. Parker, WSBA #36599

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SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN GRAYS HARBOR COUNTY

TIMBERLAND BANK, a Washington  
corporation,

Plaintiff,

vs.

SHAWN A. MESAROS and JANE DOE  
MESAROS, individually, and the marital  
community they comprise; THE STATE OF  
WASHINGTON, DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES; and  
Also all other persons or parties unknown  
claiming any right, title, estate, lien, or  
interest in the real estate described in the  
complaint herein.

NO. 15-2-605-0

ORDER CONFIRMING SALE AND  
RELEASING REGISTRY FUNDS

ORDER CONFIRMING SALE AND  
RELEASING REGISTRY FUNDS - 1

PARKER, WINKELMAN & PARKER, PS  
A PROFESSIONAL SERVICE CORPORATION  
813 LEVEE STREET  
P.O. BOX 700  
HOQUIAM, WA 98550  
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EXHIBIT A

1           BASED UPON the Plaintiff's Motion and Declaration for Order Confirming Sale and  
2 Releasing Funds from the Court Registry and upon the Grays Harbor Sheriff's Return on Writ  
3 of Execution on Personal Property,

4           THIS MATTER having come before court this day upon the motion of the plaintiff  
5 for confirmation of the sale of personal property by the Sheriff of Grays Harbor County,  
6 Washington, of the personal property described in the Sheriff's return on file herein, and  
7 under and by virtue of a writ of execution issued in the above-entitled action; and it appearing  
8 to the court that the notice of sale was given by posting and publication in the form and  
9 manner required by law, and that the personal property so sold is described as Defendant  
10 Shawn Mesaros's interest in Pamria, LLC.

11           It is further appearing that on the 26th day of June 2017, all right, title and interest of  
12 the defendants, in and to the personal property was sold by the Sheriff to AirMap Holdings,  
13 LLC for the sum of \$10,000.00 at public sale, that being the highest and best bid at the sale;  
14 and it further appearing that the Sheriff properly made and filed his return of the proceedings  
15 of the sale and more than ten days (or other applicable time period, if any) having elapsed  
16 since the return was filed and no objections or exceptions having been made or filed to the  
17 sale or to the return, and the court being fully advised, it is

18           ORDERED, ADJUDGED AND DECREED that the sale made by the Sheriff of  
19 Grays Harbor County, Washington, to the plaintiff on the 26th day of June 2017 be and the  
20 same is hereby approved and confirmed in all respects.  
21

ORDER CONFIRMING SALE AND  
RELEASING REGISTRY FUNDS - 2

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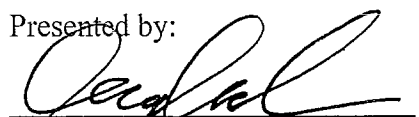
1  
2 Airmap Holdings, LLC is decreed to be the exclusive owner of Pamria, LLC. Airmap  
3 Holdings is authorized to conduct all Pamria, LLC company business including but not  
4 limited to amending any existing operating agreement and other company formation  
5 documents, directing the Washington Secretary of State to change company registered  
6 agent(s) and address(es), and to dissolve the company. Specifically, Airmap Holdings, LLC  
7 or its agents or attorneys may declare that it has the consent of the person or entity named as  
8 registered agent to make such changes. This order functions as the signed consent document  
9 for any party or governmental agency concerned.

10 IT IS FURTHER ORDERED that the funds held in the registry of the court are to be  
11 released to AirMap Holdings, LLC by the clerk in the care of its attorney Jon Parker, PO Box  
12 700, Hoquiam, WA 98550.

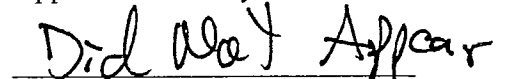
13 Dated this 31<sup>st</sup> day of July 2017.

14   
15 Judge/Commissioner

16 Presented by:

17   
18 James T. Parker, WSBA# 36599  
Attorney for Plaintiff

Approved for Entry:

17   
18 James Bulthuis, WSBA#  
Attorney for Defendant Shawn Mesaros

19  
20  
21 ORDER CONFIRMING SALE AND  
RELEASING REGISTRY FUNDS - 3

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**PARKER, WINKELMAN & PARKER, P.S.**

**September 15, 2017 - 1:40 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50207-1  
**Appellate Court Case Title:** Shawn Mesaros, Appellant v. Timberland Bank, Respondent  
**Superior Court Case Number:** 15-2-00605-0

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